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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|------------------------------|------------------|
| 10/522,419 | 01/26/2005 | Frederic Tort | 2937-124 | 5654 |
| 6449 | 7590 | 10/16/2006 | | |
| ROTHWELL, FIGG, ERNST & MANBECK, P.C. 1425 K STREET, N.W. SUITE 800 WASHINGTON, DC 20005 | | | EXAMINER RONESI, VICKEY M | |
| | | | ART UNIT 1714 | PAPER NUMBER |

DATE MAILED: 10/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/522,419

Applicant(s)

TORT ET AL.

Examiner

Vickey Ronesi

Art Unit

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29,30,33-37 and 56-89 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 29,30,33-36,56-58 and 60-89 is/are rejected.
7) ☒ Claim(s) 37 and 59 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. All outstanding claims objections and rejections, except for those given below, are withdrawn in light of applicant's amendment filed 8/3/2006.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior office action.
3. The new grounds of rejection set forth below are necessitated by applicant's addition of new claim 89. Thus, the following action is properly made final.

Claim Rejections - 35 USC § 103

4. Claims 29, 30, 33-36, 56-58, 60-63, and 70-89 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berlowitz et al (US 6,325,833).

With respect to claims 29, 30, 33-36, 56-58, 60-63, and 70-88, the rejection is adequately set forth in paragraph 7 of Office action mailed 4/4/2006 and is incorporated here by reference.

With respect to claim 89, the rejection in paragraph 7 of Office action mailed 4/4/2006 encompasses the subject matter of claim 89.

5. Claims 60, and 64-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berlowitz et al (US 6,325,833) in view of Haupais et al (US 6,068,670).

The rejection is adequately set forth in paragraph 8 of Office action mailed 4/4/2006 and is incorporated here by reference.

Allowable Subject Matter

6. Claims 37 and 59 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: neither Berlowitz et al nor Haupais et al discloses or suggests the use of a hydrotreated vegetable or animal oil.

Response to Arguments

7. Applicant's arguments filed 8/3/2006 have been fully considered but they are not persuasive. Specifically, applicant argues (A) that Berlowitz et al fails to teach a composition with explicitly 5-35 wt % C₈-C₂₂ normal paraffins and (B) that the hydrocarbon phase of the present invention cannot be a mixture of Fischer-Tropsch and non-Fischer-Tropsch hydrocarbon phases.

With respect to argument (A), while Berlowitz et al does not exemplify a composition with -35 wt % C₈-C₂₂ normal paraffins, this does not negate a finding of obviousness under 35 USC 103 since a preferred embodiment such as an example is not controlling. Rather, all disclosures "including unpreferred embodiments" must be considered. *In re Lamberti* 192 USPQ 278, 280 (CCPA 1976) citing *In re Mills* 176 USPQ 196 (CCPA 1972). Therefore, it would have been obvious to one of ordinary skill in the art to obtain a composition comprising a composition with explicitly 5-35 wt % C₈-C₂₂ normal paraffins given that Berlowitz et al teaches that the hydrocarbon portion containing 10-90 wt % Fischer-Tropsch liquids (col. 2, lines 31-38)

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and that the Fischer-Tropsch liquids contain at least 95 wt % normal paraffins or isoparaffins (col. 2, lines 11-13).

With respect to argument (B), the present claims do not exclude non-Fischer-Tropsch hydrocarbons from the hydrocarbon phase. In particular, note claim 33 where petroleum fractions of gasoline, diesel fuel, or kerosene type are a part of the hydrocarbon phase.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vickey Ronesi whose telephone number is (571) 272-2701. The examiner can normally be reached on Monday - Friday, 8:30 a.m. - 5:00 p.m.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

10/10/2006
Vickey Ronesi



Vasu Jagannathan
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